

ATTACHMENT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,)
)
Plaintiff,)
) Case No.
vs.) 5:14-cv-05344-BLF (PSG)
)
ARISTA NETWORKS, INC.,)
)
Defendant.)
)
_____)

*** CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY ***

VIDEOTAPED DEPOSITION OF JUDITH CHEVALIER, Ph.D.

San Francisco, California

Tuesday, July 26, 2016

Volume I

Reported by:

CARLA SOARES

CSR No. 5908

Job No. 2346938

Pages 1 - 233

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<div>1 UNITED STATES DISTRICT COURT</div> <div>2 NORTHERN DISTRICT OF CALIFORNIA</div> <div>3 SAN JOSE DIVISION</div> <div>4</div> <div>5 CISCO SYSTEMS, INC.,)</div> <div>6)</div> <div>6 Plaintiff,)</div> <div>7) Case No.</div> <div>7 vs.) 5:14-cv-05344-BLF (PSG)</div> <div>8)</div> <div>8 ARISTA NETWORKS, INC.,)</div> <div>9)</div> <div>9 Defendant.)</div> <div>10)</div> <div>10 _____)</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16 VIDEOTAPED DEPOSITION OF JUDITH</div> <div>17 CHEVALIER, Ph.D., Volume I, taken on behalf of</div> <div>18 Defendant, at 633 Battery Street, San Francisco,</div> <div>19 California, beginning at 10:06 a m., and ending at</div> <div>20 4:55 p m., on Tuesday, July 26, 2016, before CARLA</div> <div>21 SOARES, Certified Shorthand Reporter No. 5908.</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 2</div>	<div>1 APPEARANCES (Continued):</div> <div>2</div> <div>3 For the Defendant:</div> <div>4 WILSON SONSINI GOODRICH & ROSATI</div> <div>5 BY: BRADLEY T. TENNIS</div> <div>6 Attorney at Law</div> <div>7 650 Page Mill Road</div> <div>8 Palo Alto, California 94304</div> <div>9 650.849.3056</div> <div>10 btennis@wsgr.com</div> <div>11</div> <div>12</div> <div>13 ALSO PRESENT: Nick Baci, Ocean Tomo</div> <div>14 Sean Grant, Video Operator</div> <div>15</div> <div>16 --o0o--</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 4</div>
<div>1 APPEARANCES:</div> <div>2</div> <div>3 For the Plaintiff:</div> <div>4 QUINN EMANUEL URQUHART & SULLIVAN, LLP</div> <div>5 BY: AMY CANDIDO</div> <div>6 Attorney at Law</div> <div>7 50 California Street, 22nd Floor</div> <div>8 San Francisco, California 94111</div> <div>9 415.875.6322</div> <div>10 amycandido@quinnemanuel.com</div> <div>11</div> <div>12</div> <div>13 For the Defendant:</div> <div>14 KEKER & VAN NEST LLP</div> <div>15 BY: DAVID J. SILBERT</div> <div>16 Attorney at Law</div> <div>17 ELIZABETH K. McCLOSKEY</div> <div>18 Attorney at Law</div> <div>19 633 Battery Street</div> <div>20 San Francisco, California 94111</div> <div>21 415.391.5400</div> <div>22 dsilbert@kvn.com</div> <div>23 emccloskey@kvn.com</div> <div>24</div> <div>25</div> <div>Page 3</div>	<div>1 INDEX</div> <div>2 WITNESS</div> <div>3 JUDITH CHEVALIER, Ph.D. EXAMINATION</div> <div>4 Volume I</div> <div>5 BY MR. SILBERT 9</div> <div>6</div> <div>7 EXHIBITS</div> <div>8 NUMBER DESCRIPTION PAGE</div> <div>9 Exhibit 1564 Rebuttal Expert Report on Fair 8</div> <div>10 Use of Judith A. Chevalier</div> <div>11</div> <div>12 Exhibit 1565 Expert Report of Judith A. 8</div> <div>13 Chevalier</div> <div>14</div> <div>15 Exhibit 1566 Surrebuttal Expert Report of 8</div> <div>16 Judtih A. Chevalier</div> <div>17</div> <div>18 Exhibit 1567 Document headed "Samsung's 18</div> <div>19 damages expert calls Apple's</div> <div>20 patents 'negligible' in value"</div> <div>21</div> <div>22 Exhibit 1568 Order Granting In Part and 27</div> <div>23 Denying In Part Motions to</div> <div>24 Exclude Certain Expert Opinions</div> <div>25</div> <div>Page 5</div>

1	EXHIBITS		1	San Francisco, California
2	NUMBER DESCRIPTION PAGE		2	Tuesday, July 26, 2016
3	Exhibit 1569 Document entitled "Arista	73	3	10:06 a.m.
4	Competitive Program,"		4	
5	Bates CSI-ANI-00056465 - 6465.000035		5	(Exhibit 1564, Exhibit 1565 and Exhibit
6			6	1566 were marked for identification and are
7	Exhibit 1570 Spreadsheet	129	7	attached hereto.)
8			8	
9	Exhibit 1571 E-mail string, top e-mail to	159	9	PROCEEDINGS
10	Anshul Sadana from Mark Foss,		10	THE VIDEO OPERATOR: Good morning. We're
11	dated 1-15-09,		11	on the record. The time is 10:06 a.m., and the date
12	Bates ARISTANDCA12260577		12	is July 26th, 2016.
13			13	This begins the videotaped deposition of
14	Exhibit 1572 Facebook RFP	161	14	Dr. Judith Chevalier. My name is Sean Grant, here
15			15	with our court reporter, Carla Soares. We're here
16	Exhibit 1573 (Exhibit number not used)		16	from Veritext Legal Solutions at the request of
17			17	counsel for defendant.
18	Exhibit 1574 E-mail string, top e-mail to	178	18	This deposition is being held at Keker &
19	Drew Pletcher from Brook Crossman,		19	Van Nest LLP in San Francisco, California. The
20	dated 3-27-13,		20	caption of this case is Cisco Systems, Inc., versus
21	Bates CSI-ANI-00067670 - 7670		21	Arista Networks, Inc., Case No. 5:14-cv-05344-BLF.
22			22	Please note that audio- and
23	Exhibit 1575 Document headed "Financial	192	23	video-recording will take place unless all parties
24	Services Competitive Update,"		24	have agreed to go off the record. Microphones are
25	Bates CSI-CLI-01588647 - 8654		25	sensitive and may pick up whispers, private
		Page 6		Page 8
1	EXHIBITS		1	conversations, or cell interference.
2	NUMBER DESCRIPTION PAGE		2	At this time, will counsel please identify
3	Exhibit 1576 E-mail string, top e-mail to	221	3	themselves and state whom they represent.
4	various individuals from Weird		4	MR. SILBERT: David Silbert, Keker &
5	Kid Software, dated 3-29-12,		5	Van Nest, on behalf of defendant Arista.
6	with attachments,		6	MS. McCLOSKEY: Elizabeth McCloskey from
7	Bates CSI-CLI-01610893 - 0938		7	Keker & Van Nest on behalf of defendant Arista.
8			8	MR. BACIU: Nick Baciu, Ocean Tomo, on
9	--o0o--		9	behalf of Arista.
10			10	MR. TENNIS: Brad Tennis from Wilson
11			11	Sonsini on behalf of Arista.
12			12	MS. CANDIDO: Amy Candido from Quinn
13			13	Emanuel on behalf of Cisco Systems and the witness.
14			14	THE VIDEO OPERATOR: Thank you.
15			15	Will the certified court reporter please
16			16	swear in the witness.
17			17	JUDITH CHEVALIER, Ph.D.,
18			18	having been administered an oath, was examined and
19			19	testified as follows:
20			20	EXAMINATION
21			21	BY MR. SILBERT:
22			22	Q Good morning, Dr. Chevalier.
23			23	A Good morning.
24			24	Q Do you understand that you've sworn an
25			25	oath to tell the truth today under penalty of
		Page 7		Page 9

<p>1 So do you mean statements -- do you mean 2 e-mails? Do you mean communications like RFPs? Do 3 you mean -- what do you exactly mean by 4 "communications"?</p> <p>5 Q I mean any of those things. Testimony, 6 any other form of evidence that exists that reflects 7 what a customer has said about, "This is what -- 8 these are the features that are important to us."</p> <p>9 A Yes.</p> <p>10 Q You asked for that category of evidence to 11 be provided to you?</p> <p>12 A Yes.</p> <p>13 Q And did you make a decision to value that 14 category of evidence less than other types of 15 evidence?</p> <p>16 A No.</p> <p>17 Q Do you think you did value it less than 18 other types of evidence?</p> <p>19 A No.</p> <p>20 MR. SILBERT: Why don't we take a break. 21 THE WITNESS: Okay. 22 THE VIDEO OPERATOR: Going off the record, 23 the time is 11:03 a.m. 24 (Recess, 11:03 a.m. - 11:09 a.m.) 25 THE VIDEO OPERATOR: Back on the record.</p> <p style="text-align: right;">Page 50</p>	<p>1 you reliable information about what mattered to them 2 in those particular sales?</p> <p>3 A Possibly. Though, again, I would say, you 4 know, I think business records and the deposition 5 testimony of Arista and Cisco personnel, I think, 6 for most customers, I think, is as or more valuable.</p> <p>7 Q You identified 30 customers to which you 8 say Cisco lost sales to Arista as a result of the 9 alleged infringement, right?</p> <p>10 A Well, actually, in my last analysis, I 11 speak about the fact that I think many customers 12 generally, you know, are lost.</p> <p>13 But I identify -- then when I look at the 14 tiers, I identify specific customers for whom the 15 evidentiary record is particularly strong.</p> <p>16 But this is against the backdrop that the 17 customer specifically cared about CLI. But again, 18 this is against the backdrop that the, you know, 19 deponents viewed the CLI as important generally, 20 and, you know, my last analysis reflects that.</p> <p>21 Q When you say your last analysis, just so 22 our terms are straight, you're referring to what you 23 call your Scenario 3 in your expert report; is that 24 right?</p> <p>25 A Yes, that's what I'm -- yes.</p> <p style="text-align: right;">Page 52</p>
<p>1 The time is 11:09 a.m. 2 BY MR. SILBERT:</p> <p>3 Q Dr. Chevalier, did you or anyone under 4 your direction ask any customers whether a 5 Cisco-like CLI was important to them?</p> <p>6 A So directly ask a customer? No, I did 7 not.</p> <p>8 Q Why not?</p> <p>9 A So I think that there's a number of 10 reasons.</p> <p>11 First, I think the record at the time is 12 usually preferred to a retrospective inquiry of a 13 customer.</p> <p>14 I also think the -- I think the record 15 actually provided a fair bit of information about 16 this topic, so I did not feel a need to ask 17 customers directly, especially given the limitations 18 of retrospectively asking customers.</p> <p>19 Q Some of the sales that are included in 20 your damages analysis are pretty recent, right?</p> <p>21 A Yes, some of them are pretty recent.</p> <p>22 Q Last quarter, the quarter before that, 23 correct?</p> <p>24 A Um-hum. Yes.</p> <p>25 Q Wouldn't a customer have been able to give</p> <p style="text-align: right;">Page 51</p>	<p>1 Q Okay. And as far -- I'm not trying to 2 pretend Scenario 3 doesn't exist. But under 3 Scenarios 1 and 2, you actually identify a total of 4 30 customers that you say Cisco lost sales to as a 5 result of Arista's alleged infringement, right?</p> <p>6 A So those are customers for which, yes, I 7 calculate Cisco's lost sales. Yes.</p> <p>8 Q And there's 30 total that you --</p> <p>9 A And there's 30 there.</p> <p>10 Q A minute ago, you talked about some issues 11 with retrospective analyses that would arise if 12 someone were to ask a customer what happened in a 13 particular sale, right?</p> <p>14 A Correct.</p> <p>15 Q Do those same issues exist if somebody is 16 asked, say, in a deposition what mattered in a 17 particular sale or sales or market conditions that 18 might have existed years ago?</p> <p>19 A So I think it's less a criticism of things 20 like market conditions, general -- you know, the 21 general customer preferences, general customer 22 environment.</p> <p>23 There may be -- of course, we see 24 deponents have imperfect recall and say they don't 25 remember things about specific customers and</p> <p style="text-align: right;">Page 53</p>

<p>1 that I identified are largely -- they are all 2 customers who have existing Cisco infrastructure, 3 and, of course, we don't know the full inventory of 4 other switches that they might have. So they may 5 have, at some point, made an investment in another 6 CLI for some reason, okay?</p> <p>7 But we have heard from Arista that their 8 customers would not buy Arista switches but for the 9 infringing CLI, that it is a requirement for most 10 customers.</p> <p>11 And these are customers who have -- for 12 whom the similarity -- particularly, the Tier 1 13 customers are customers for whom the similarity of 14 the CLI to Cisco's CLI has been identified in their 15 marketing communications.</p> <p>16 Q Do you know how many customers Arista has?</p> <p>17 A I don't know about the long tail. At some 18 point I knew it, but I don't know offhand.</p> <p>19 Q Does a few thousand sound right?</p> <p>20 A A few thousand sounds right.</p> <p>21 Q So you recall earlier you talked about 22 80 percent of Arista's customers potentially 23 requiring a Cisco-like CLI.</p> <p>24 A Yes.</p> <p>25 Q So that if it's -- let's just take 2,000,</p>	<p>1 question the first time.</p> <p>2 So in my report, I discuss the fact that 3 customers who completely directly program their 4 switches in Linux are candidates for customers who, 5 you know, would not care about the CLI.</p> <p>6 Q But --</p> <p>7 A So they would be my candidates for the 8 20 percent, customers who program in Linux 9 exclusively.</p> <p>10 Q Sorry. Are you done?</p> <p>11 A I'm done.</p> <p>12 Q Did you make any attempt to identify who 13 those customers are?</p> <p>14 A So I investigated the record on that 15 topic, and there's some evidence in the record that 16 we can discuss. But -- so, yes, I made some effort.</p> <p>17 Q What evidence are you referring to?</p> <p>18 A Okay. So first, so the 80 percent, of 19 course, comes from that document posted by Mr. Duda, 20 and Mr. Duda testified about the document, you'll 21 probably recall.</p> <p>22 And in his testimony, one thing that he 23 said was -- about that document was, 80 percent of 24 customers or 80 percent of switches. And then he 25 also said -- actually, maybe he said 20 percent of</p>
<p>1 okay, as an approximate number of Arista's 2 customers. That would make 400 customers who don't, 3 under that -- under that allocation, right?</p> <p>4 A Correct.</p> <p>5 Q So did you do anything to identify the 6 particular customers who don't require a Cisco-like 7 CLI?</p> <p>8 A Okay. So Arista was asked about that many 9 times. Arista executives were asked that -- 10 versions of that question many times in deposition, 11 and there aren't -- there aren't great answers to 12 that question.</p> <p>13 But I have considered this -- I have, you 14 know, considered this issue at length in examining 15 the record. So that's why I identified the Tier 1 16 and Tier 2 customers, because they -- there's 17 specific evidentiary record that they would not have 18 bought an Arista switch but for the Cisco 19 infringement.</p> <p>20 They -- I just lost my train of thought. 21 Sorry. Could you repeat your question?</p> <p>22 Q Do you have any understanding of who are 23 the 20 percent, if it's 20 percent, of Arista 24 customers who primarily don't use the CLI?</p> <p>25 A Okay. I think I misunderstood your</p>	<p>1 customers or 20 percent of switches, taking the 2 reverse piece. And then he said 20 percent of 3 customers or of the installed base.</p> <p>4 So the first, you know, thing I was 5 looking for about that -- you know, one thing I was 6 looking for about that document was, in Mr. Duda's 7 testimony, he equated the share of customers with 8 the share of switches, which was helpful, because it 9 was informative that the customers -- the customers 10 who -- for whom this might be true are not either 11 extremely -- are not necessarily -- he has not 12 suggested -- he has suggested the opposite -- that 13 they are average size, on average.</p> <p>14 Q Do you recall Mr. Duda saying, in that 15 testimony, that he didn't intend the 20 percent 16 number to be quantitative?</p> <p>17 A I do recall him saying that, and that's 18 why I investigated the 20 percent number in other 19 ways, and found it to actually be a likely 20 overestimate of the fraction of customers who 21 directly programmed the switches in Linux.</p> <p>22 Q Which were the other ways?</p> <p>23 A Okay. So first, there's actually a fair 24 bit of deponent testimony on this topic.</p> <p>25 So for example, Mr. Dale asserts</p>

<p>1 skepticism that anybody completely relies on Linux</p> <p>2 for programming the switches.</p> <p>3 I think Mr. Berly also expresses a fair</p> <p>4 bit of skepticism on that point.</p> <p>5 Even Mr. Duda, in his testimony about not</p> <p>6 meaning the number to be quantitative, talks about</p> <p>7 the limitations to the extent -- I don't remember it</p> <p>8 exactly, but the limitations to the extent that</p> <p>9 customers rely on Linux. Okay. So there's three,</p> <p>10 you know, deponents I looked at there.</p> <p>11 Let me say, I don't quite -- it is a</p> <p>12 public representation. So while he didn't mean it</p> <p>13 to be quantitative, I assume he didn't mean it to be</p> <p>14 misleading, right, that it does provide some</p> <p>15 guidance.</p> <p>16 Other deponents have argued, therefore,</p> <p>17 that the fraction of customers who rely entirely on</p> <p>18 Linux is much smaller than the 20 percent number</p> <p>19 posed by Mr. Duda. So again, Mr. Dale, Mr. Berly.</p> <p>20 So I found that helpful.</p> <p>21 Also, as we've discussed before, if I want</p> <p>22 to think about the question of -- for the purposes</p> <p>23 of that analysis, the Scenario 3 -- Scenario 3 is</p> <p>24 not reliant on identifying the specific customers,</p> <p>25 but it is reliant on the revenue shares being</p> <p>Page 126</p>	<p>1 THE VIDEO OPERATOR: Back on the record.</p> <p>2 The time is 2:03 p m.</p> <p>3 BY MR. SILBERT:</p> <p>4 Q Dr. Chevalier, before the break, you were</p> <p>5 talking about Microsoft as an Arista customer.</p> <p>6 Do you recall that?</p> <p>7 A Yes.</p> <p>8 Q And are you aware that Microsoft provided</p> <p>9 a spreadsheet to Arista in which it listed features</p> <p>10 that it wanted in an Ethernet switch and assigned</p> <p>11 different weights to those features?</p> <p>12 A I have seen the spreadsheet to which you</p> <p>13 are referring, though the context of the</p> <p>14 spreadsheet, I will say, is not completely clear.</p> <p>15 But yes.</p> <p>16 Q And is that spreadsheet one of the</p> <p>17 documents that you referred to this morning as a</p> <p>18 recently surfaced document?</p> <p>19 A I'm not sure. I know the document you</p> <p>20 mean. I don't actually remember when I first saw</p> <p>21 it.</p> <p>22 Q Do you believe you may have seen that</p> <p>23 document before you produced your main damages</p> <p>24 report, Exhibit 1565?</p> <p>25 A It's all so close together. I think if</p> <p>Page 128</p>
<p>1 roughly correct, right? I mean, I think I make it</p> <p>2 clear that it's an estimate. So the question of,</p> <p>3 you know, size is important.</p> <p>4 I believe that Microsoft is one of</p> <p>5 Arista's largest customers. And so the fact that</p> <p>6 there is specific evidentiary evidence about</p> <p>7 Microsoft was helpful for my thinking about whether</p> <p>8 the 80 percent/20 percent number was roughly</p> <p>9 correct.</p> <p>10 The same for Facebook, which is a very</p> <p>11 large customer, that there is specific evidentiary</p> <p>12 evidence suggests that the 20 percent number can't</p> <p>13 be an overstatement -- that makes it less likely</p> <p>14 that the 20 percent number is an overstatement of</p> <p>15 revenues.</p> <p>16 Do you want me to stop there?</p> <p>17 Q Sure.</p> <p>18 A There's more, but I'll stop.</p> <p>19 MR. SILBERT: How long have we been going?</p> <p>20 MS. CANDIDO: We've been going over an</p> <p>21 hour.</p> <p>22 MR. SILBERT: Why don't we take a break.</p> <p>23 THE VIDEO OPERATOR: Going off the record,</p> <p>24 the time is 1:55 p m.</p> <p>25 (Recess, 1:55 p.m. - 2:03 p m.)</p> <p>Page 127</p>	<p>1 it's in my documents relied upon, then I probably</p> <p>2 saw it. And otherwise, no, I can't remember now.</p> <p>3 Q Why don't we take a look at it.</p> <p>4 A Okay.</p> <p>5 (Exhibit 1570 was marked for</p> <p>6 identification and is attached hereto.)</p> <p>7 BY MR. SILBERT:</p> <p>8 Q Dr. Chevalier, is Exhibit 1570 the</p> <p>9 document you were referring to?</p> <p>10 A Yes. It appears to be.</p> <p>11 Q Yeah. And I was going to say, just to be</p> <p>12 clear, I think there's a couple of versions of a</p> <p>13 similar document that have been produced in the</p> <p>14 case.</p> <p>15 A Okay.</p> <p>16 Q So just with that understanding for the</p> <p>17 record.</p> <p>18 What significance, if any, did you</p> <p>19 attribute to the information in Exhibit 1570</p> <p>20 in forming your opinions in this case?</p> <p>21 MS. CANDIDO: Objection.</p> <p>22 THE WITNESS: So I can -- again, I'm</p> <p>23 trying to remember when I first saw this document,</p> <p>24 but -- or a variant thereof.</p> <p>25 Mostly, I would say this document is</p> <p>Page 129</p>

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43 (Pages 166 - 169)

<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Is that a true statement?</p> <p>4 A Yes. Sorry. I just lost where you were.</p> <p>5 Where is it?</p> <p>6 Q It's on page 12, and it's the last -- if</p> <p>7 you look two lines up from where the footnote break</p> <p>8 is --</p> <p>9 A Yep.</p> <p>10 Q -- the sentence starts in the middle of</p> <p>11 the paragraph. I'll read it again. It says,</p> <p>12 "Today, Arista's customer base is largely comprised</p> <p>13 of vendors in each of the four key verticals</p> <p>14 adopting cloud networking."</p> <p>15 A Yep.</p> <p>16 Q Is that a true statement?</p> <p>17 A Yep.</p> <p>18 Q Going on, it says, "An estimated</p> <p>19 50 percent of Arista's customer base is made up of</p> <p>20 'cloud titans,' including Microsoft, Google and</p> <p>21 Facebook, among others."</p> <p>22 Is that correct?</p> <p>23 A Yes.</p> <p>24 MR. SILBERT: Shall we take a break?</p> <p>25 MS. CANDIDO: Sure.</p> <p>Page 170</p>	<p>1 you're referring to are that in your opinion, Arista</p> <p>2 has greater visibility into the importance of a</p> <p>3 Cisco-like CLI than Cisco does; is that right?</p> <p>4 MS. CANDIDO: Objection.</p> <p>5 THE WITNESS: So the issue that -- I think</p> <p>6 what we discussed earlier was that it may be the</p> <p>7 case that, at least for some time period, Arista has</p> <p>8 greater visibility into that than Cisco, though that</p> <p>9 isn't the only reason why Arista information is more</p> <p>10 helpful than Cisco's analysis of why they lost the</p> <p>11 sale.</p> <p>12 Because why Cisco lost the sale is a</p> <p>13 question about, in a world with near CLI parity,</p> <p>14 what was the thing that led the customer to buy the</p> <p>15 Arista switch rather than the Cisco switch? But</p> <p>16 it's not directly dispositive of but-for causality.</p> <p>17 BY MR. SILBERT:</p> <p>18 Q And there you're referring to but-for</p> <p>19 causality as far as whether or not Arista would have</p> <p>20 made the sale if it were not using a Cisco-like CLI;</p> <p>21 is that right?</p> <p>22 A Right. So but-for causality is, would</p> <p>23 Arista have made the sale if they were not using a</p> <p>24 Cisco-like CLI?</p> <p>25 Q But another element of your opinion on</p> <p>Page 172</p>
<p>1 THE WITNESS: Does the tape need a break?</p> <p>2 MR. SILBERT: Now we've talked about it,</p> <p>3 so why don't we do it.</p> <p>4 THE VIDEO OPERATOR: Going off the record,</p> <p>5 the time is 3:04 p m.</p> <p>6 (Recess, 3:04 p.m. - 3:14 p m.)</p> <p>7 THE VIDEO OPERATOR: Back on the record.</p> <p>8 The time is 3:14 p m.</p> <p>9 MR. SILBERT: Before we start again, Amy,</p> <p>10 let me give you the Bates number you asked for,</p> <p>11 which is for Exhibit 1572, the Facebook RFP. It</p> <p>12 turns out my paralegal Jordan had helpfully written</p> <p>13 it on the folder, but I overlooked that. The Bates</p> <p>14 number is ARISTANDCA11423257.</p> <p>15 MS. CANDIDO: Thank you.</p> <p>16 BY MR. SILBERT:</p> <p>17 Q Dr. Chevalier, in forming your opinions on</p> <p>18 lost sales, did you consider analyses by Cisco of</p> <p>19 why Cisco lost a particular sale to Arista?</p> <p>20 A So I did to some extent. I did consider</p> <p>21 those. For reasons that we've discussed earlier, I</p> <p>22 think they're less helpful than the analyses by</p> <p>23 Arista of why they won sales, or -- and we can talk</p> <p>24 more about that. But I did consider that.</p> <p>25 Q The reasons we discussed earlier that</p> <p>Page 171</p>	<p>1 lost sales is, for a certain portion of sales, at</p> <p>2 least, if Arista had not made a particular sale,</p> <p>3 Cisco would have made that sale; is that right?</p> <p>4 A So for a share -- right. In my analysis,</p> <p>5 for a share of customers, if Cisco had not made the</p> <p>6 sale -- sorry -- if Arista had not made the sale,</p> <p>7 Cisco would have; though I don't opine on that with</p> <p>8 regard to particular customers, only the overall</p> <p>9 share.</p> <p>10 Q Right. And that's exactly where I was</p> <p>11 going.</p> <p>12 So you do -- in your Scenario 3, you apply</p> <p>13 a market share approach to form an opinion on what</p> <p>14 portion of sales Cisco would have made had they not</p> <p>15 been made by Arista; is that right?</p> <p>16 A I do that in all three scenarios.</p> <p>17 Q Okay. Fair enough.</p> <p>18 But in Scenarios 1 and 2, you do not try</p> <p>19 to identify any particular customers for which Cisco</p> <p>20 may or may not have made the sale; is that right?</p> <p>21 A I used the share -- yes, I used the share</p> <p>22 evidence, not customer by customer for that</p> <p>23 calculation.</p> <p>24 Q Is there any particular reason you used a</p> <p>25 market share approach rather than a</p> <p>Page 173</p>

<p>1 Q Do you have any reason to doubt that 2 statement? 3 A No. 4 Q It says, "New definitions have emerged 5 categorized as ultra low latency as being under one 6 microsecond, typically over ten gigabit Ethernet. 7 Customers are looking for Ethernet alternatives to 8 Infiniband which can be between 100 to 500 9 nanoseconds." 10 Do you see that? 11 A Yes. 12 Q Do you have any reason to doubt those 13 statements? 14 A No. 15 Q It then says, "The following accounts have 16 documented losses due to severe gaps in Cisco's 17 product portfolio and lack of story for alternative 18 to Infiniband." 19 Do you see that? 20 A Yes. 21 [REDACTED]</p> <p style="text-align: right;">Page 194</p>	<p>[REDACTED]</p> <p>11 Q Okay. You can put that aside. 12 I know you've explained this a little bit, 13 but can you just explain to me again, what do the 14 customers in your Scenario 1 represent and what do 15 the customers in your Scenario 2 represent? 16 A Yes. So again, I would say that I -- 17 (Proceedings interrupted.) 18 THE WITNESS: So I think the best way to 19 explain what my Scenario 1 customers and my 20 Scenario 2 customers represent is that -- my 21 Scenario 3 customers -- or my Scenario 3 environment 22 uses data from Arista to calculate the share of 23 customers for whom -- conservatively, the share of 24 customers for whom the Cisco-like CLI was a 25 but-for -- was a but-for requirement for sales,</p> <p style="text-align: right;">[REDACTED]</p>
<p>[REDACTED]</p>	<p>1 which is to say, but for the infringing CLI, Arista 2 would not have made the sale. 3 And so overall, I think we feel very 4 confident -- I feel very confident based on the mass 5 of deponent testimony and the mass of information 6 available that the vast majority of customers, and 7 the majority of switches, CLI was a requirement, 8 right? 9 You know, I am here relying on at least 10 four Arista deponents in making that statement. 11 So that's sort of the base -- I think of 12 that as the scenario which, you know, based on the 13 evidence available, is a good -- is a good indicator 14 of, you know, Cisco's lost sales. 15 In my Scenario 1 and my Scenario 2, I come 16 up with lower lost profits numbers by adding kind of 17 an additional requirement that there's specific 18 information about the specific customer that relates 19 to the customer's consideration of CLI, or the 20 importance of CLI in the purchase process. 21 So again, I think Scenario 1 and 22 Scenario 2 are best understood against the backdrop 23 of Scenario 3, which is substantiated by enormous 24 deponent testimony from Arista. 25 But I make these more conservative</p> <p style="text-align: right;">Page 197</p>

1 allocations in Scenario 1 and Scenario 2 in order to
2 provide a range. And in Scenario 1 and Scenario 2,
3 I identify specific -- so in Scenario 1, I identify
4 specific customers for whom there is evidence of --
5 there is evidence that Arista featured CLI
6 prominently in materials specific to that customer.
7 We see across Arista's presentations that
8 in some presentations, they feature this CLI more or
9 less prominently. So at least in presentations,
10 they feature CLI prominently, and/or there's
11 documentation of conversation or, you know, a
12 specific customer interaction that features -- a
13 responsive customer interaction that features CLI.
14 In Tier 2, there's evidence that CLI is
15 featured in marketing presentations to the customer,
16 presentations to the customer, to the specific
17 customer, but CLI is featured somewhat less
18 prominently there in those presentations.
19 And I also include in Tier 2 other
20 customers for whom, you know, the record
21 indicates -- the record indicates that the customer
22 is considering CLI importantly, but there is, you
23 know, perhaps some -- something that makes the
24 record less clear, slightly less clear than for the
25 Tier 1 customers.

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1 So the Tier 1 and Tier 2 are attempts to
2 subcategorize, provide extra information and extra
3 evidence for customers within the Tier 3 scenario,
4 or the Scenario 3.
5 BY MR. SILBERT:
6 Q So if I understand correctly, if, in your
7 review of the record in the case, you found specific
8 information for a specific customer which, in your
9 view, indicated that that customer believed a
10 Cisco-like CLI was important to the purchase
11 decision, you put that customer into Scenario 1 or
12 Scenario 2?
13 A So if I saw -- again, if I saw specific
14 evidence that the Cisco-like nature of the CLI was
15 being importantly considered by the customer, I put
16 them in Tier 1 and Tier 2, against the backdrop that
17 substantially all of the customers have been
18 testified by Arista to be but for -- you know, but
19 for the infringing CLI, not purchasing Arista
20 products.
21 Q So if a customer is in Scenario 3 but not
22 in Scenario 1 or 2, that means that you didn't find
23 any specific evidence for that specific customer
24 that that customer considered a Cisco-like CLI to be
25 an important part of its purchase decision?

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1 MS. CANDIDO: Objection.
2 THE WITNESS: Yeah. So if a customer is
3 in neither Scenario 1 nor Scenario 2, I didn't see
4 substantial evidence that was clearly
5 customer-specific that that customer -- for that
6 specific customer.
7 So that customer falls under the umbrella
8 of Arista deponents' testimony that their purchases
9 are, you know, importantly driven by CLI, but not --
10 but not -- you know, that the evidentiary record for
11 the specific customer is less rich.
12 BY MR. SILBERT:
13 Q Okay. And again, I apologize if we're
14 retreading old ground here, but I just want to be
15 sure I understand.
16 Your opinion is that for those customers
17 in Scenario 3, even if they bought switches from
18 other vendors like HP or Alcatel-Lucent or any other
19 vendor you might name that have different CLIs, you
20 still believe that Arista would not have been able
21 to sell to those vendors if Arista didn't have a
22 Cisco-like CLI?
23 A So again, in Scenario 3, I make a
24 conclusion that 80 percent of the sales would not
25 have occurred but for the infringing CLI.

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1 Again, I think that's fairly small -- that
2 is a somewhat small fraction relative to the
3 testimony of numerous Arista deponents. So it's
4 conservative, right?
5 So I'm not making the statement that every
6 customer -- that but-for causality is established by
7 every customer. I'm only making that -- I'm making
8 that conclusion for fewer customers than Arista says
9 it's true for.
10 And then I am, furthermore, allocating the
11 but-for sales to not just Cisco, but other vendors,
12 to allow for the possibility that some of those
13 vendors -- that some of those customers would have
14 bought other switches.
15 Q Okay. In your opinion on disgorgement --
16 switching gears --
17 A Okay.
18 Q -- from lost sales to disgorgement, you
19 start with sales that -- for which you say there's a
20 nexus to the infringement, right?
21 A Yes.
22 Q And the sales that you identify as having
23 a nexus to the infringement are all of Arista's
24 U.S. switch sales, right?
25 A Yes. So my understanding of my duty in

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<p>1 disgorgement is to represent the revenues and to -- 2 and to then -- to represent the revenues, and then 3 to -- and then it is Ms. Elsten's duty to apportion 4 them, okay? 5 But I don't -- so the nexus there is not 6 but-for causality. 7 So my understanding is that, for example, 8 if Cisco -- if Arista gets to -- to give an example, 9 just one example, if Arista gets to charge more 10 because its switches have these features, then 11 Ms. Elsten will take that into consideration in 12 disgorgement. 13 So the standard of -- it must be the -- my 14 understanding of what I'm supposed to do in the 15 copyright allocation is to establish a causal nexus 16 between the revenues and the infringing features, 17 and that it is Ms. Elsten's duty to determine what 18 portion of the revenues are attributable to the 19 infringing features. 20 Q Okay. And I think you anticipated where I 21 was going. 22 But from your Scenario 3, you deduct 23 20 percent of the -- of Arista's revenues from your 24 Scenario 3, from the base of your Scenario 3, 25 because -- and I understand you say it's a</p> <p style="text-align: right;">Page 202</p>	<p>1 evidence in the record that the -- that even the 2 pure -- the supposedly pure Linux managers use the 3 CLI to some extent. 4 And so if Ms. Elsten would like to argue 5 that it's very low, that the incremental value that 6 those particular customers put on the CLI is very 7 low, she should do that in her apportionment 8 analysis. 9 But given the evidence that all of the 10 customers use, at least to some extent, the 11 infringing features, and the substantial part of the 12 revenues are related to the infringing features, and 13 all of the sales include the infringing features, my 14 understanding is, parsing that out, you know, to 15 what extent the -- you know, the infringing features 16 create value for the products is Ms. Elsten's 17 burden. 18 Q Okay. So I think I understand your 19 position on nexus, so let's then talk about 20 apportionment, which I understand you've described 21 as being Ms. Elsten's burden, not yours. 22 A Correct. 23 Q But you do address it to some degree in 24 your rebuttal report, right? 25 A Yes, I do.</p> <p style="text-align: right;">Page 204</p>
<p>1 conservative estimate. I'm not trying to argue that 2 with you. 3 But you say -- that's a number you say 4 either adopted a pure Linux approach, or however you 5 want to describe it, but that you don't include 6 those in your Scenario 3 for lost profits, right? 7 A I do not include those in my Scenario 3 8 for lost profits. 9 Q But those pure Linux approach customers, 10 or however you want to describe those customers, you 11 still say that there's a nexus to the allegedly 12 infringing CLI, to the sales of those customers, 13 when you're talking about disgorgement, right? 14 MS. CANDIDO: Objection. 15 THE WITNESS: So again, I -- my 16 understanding is that the nexus standard isn't 17 but-for causality, but that the sale is -- that 18 there is a link between the sale and the infringing 19 product. 20 BY MR. SILBERT: 21 Q And for those 20 percent of customers that 22 you deducted from your Scenario 3, what's your basis 23 for saying that there is a link between the sale and 24 the alleged infringement? 25 A So there is -- there's substantial</p> <p style="text-align: right;">Page 203</p>	<p>1 Q Okay. 2 A I think that's supposed to be the point of 3 the rebuttal report, is to respond to her 4 apportionment. 5 Q Okay. And your rebuttal report is 6 Exhibit 1566. And again, we're on the subject of 7 disgorgement here. 8 A Yes. 9 Q Because you give some total numbers where 10 you add disgorgement to what your lost profits 11 calculations would be, and in those calculations, 12 you try to net out the lost profits from the 13 disgorgement, right, so there's no double-dipping, 14 right? 15 A Correct. 16 Q Okay. So I get that. I'm just trying, 17 for clarity, to focus on -- because you also offer 18 opinions where you say -- and I could point you to 19 page 5 of your rebuttal report at the top. It's 20 paragraph 8. 21 You say, "Assuming lost profits are not 22 awarded, Arista's unjust enrichment is 455.5" -- 23 A I'm sorry. What page are you on? 24 Q Sorry. It's page 5 -- 25 A Okay.</p> <p style="text-align: right;">Page 205</p>


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<p>1 Q -- paragraph 8 --</p> <p>2 A Yes.</p> <p>3 Q -- which starts on page 4, but it's</p> <p>4 actually the last sentence of that paragraph on the</p> <p>5 top of page 5.</p> <p>6 A Yes.</p> <p>7 Q You say, "Assuming lost profits are not</p> <p>8 awarded, Arista's unjust enrichment is</p> <p>9 455.5 million."</p> <p>10 Is that right?</p> <p>11 A Yes. Well, again, I have two --</p> <p>12 paragraph 8 and paragraph 9 are under different</p> <p>13 scenarios. But yes.</p> <p>14 Q Okay. Right. So this is what I was going</p> <p>15 to -- that's what I was going to try to understand.</p> <p>16 Because then there's another scenario in</p> <p>17 paragraph 9 towards the bottom. You say, "Assuming</p> <p>18 lost profits are not awarded in this scenario,</p> <p>19 Arista's unjust enrichment is 56.9 million," right?</p> <p>20 A Yes.</p> <p>21 Q So what's the difference between the</p> <p>22 scenario where Arista's lost profits -- where</p> <p>23 Arista's unjust enrichment is 56.9 million in</p> <p>24 paragraph 9, and Arista's unjust enrichment is</p> <p>25 455.5 million in paragraph 8?</p> <p style="text-align: right;">Page 206</p>	<p>1 and there's a bunch of hybrid scenarios, which is</p> <p>2 why I'm pointing you to Exhibit 3 -- is that</p> <p>3 Ms. Elsten's general apportionment methodology, this</p> <p>4 idea of apportioning based -- apportioning the</p> <p>5 revenues roughly the way she's described, but</p> <p>6 correcting some issues with her revenue</p> <p>7 apportionment, if her general methodology is</p> <p>8 accepted, I argue in the report that it's my opinion</p> <p>9 that even accepting her general methodology, there</p> <p>10 should be some adjustments to her general</p> <p>11 methodology based on some logical errors that I --</p> <p>12 that she has made, which, you know, I'm sure we'll</p> <p>13 talk about.</p> <p>14 And so in the back, there's actually --</p> <p>15 this is the summary of conclusions that you've</p> <p>16 pointed to.</p> <p>17 In the back, I actually go through a bunch</p> <p>18 of hybrid methodologies, such as her revenue</p> <p>19 apportionment is not accepted but her cost</p> <p>20 apportionment is accepted; her cost apportionment is</p> <p>21 not accepted but her revenue apportionment is</p> <p>22 accepted.</p> <p>23 The general methodology -- so all of the</p> <p>24 cases, you know, about -- because I criticized both</p> <p>25 her cost apportionment and her revenue</p> <p style="text-align: right;">Page 208</p>
<p>1 A Okay. So I think this might be easiest to</p> <p>2 see in the tables and in the exhibits.</p> <p>3 In the -- let me remember which exhibit it</p> <p>4 is. I feel like it's 6, but -- okay. No, it goes</p> <p>5 all the way. I marked through them.</p> <p>6 So start with -- I mean, we can look at</p> <p>7 Exhibit 3, but we could look at a bunch of exhibits</p> <p>8 back here.</p> <p>9 So what I'm anticipating in this report is</p> <p>10 that there are various scenarios that the Court</p> <p>11 could choose which hang on the Court's opinion of</p> <p>12 Ms. Elsten's apportionment methodology, okay?</p> <p>13 So for example -- so I express the opinion</p> <p>14 in the report that Ms. Elsten simply has not met her</p> <p>15 burden of apportioning appropriately. And if the</p> <p>16 Court finds that, then, you know, the basis for</p> <p>17 unjust enrichment is the entirety of the revenues,</p> <p>18 unless the Court allows some different apportionment</p> <p>19 that I haven't yet seen, okay?</p> <p>20 So that's a scenario, that the Court just</p> <p>21 says, "Sorry, you didn't meet your burden and, you</p> <p>22 know, there's no apportionment, that I don't believe</p> <p>23 your apportionment," so all of the revenues are</p> <p>24 available. So that's one scenario.</p> <p>25 Another scenario, which is paragraph 9 --</p> <p style="text-align: right;">Page 207</p>	<p>1 apportionment. And I do a correction of -- I do</p> <p>2 some correction to her revenue apportionment and her</p> <p>3 cost apportionment.</p> <p>4 But, you know, I offer the opinion that</p> <p>5 these are -- that she has not really met her burden,</p> <p>6 so we go back to the -- I'm outlining the scenario</p> <p>7 here in which the Court just rejects her -- some of</p> <p>8 her apportionment, and that's what all the hybrid</p> <p>9 cases are.</p> <p>10 Q Okay. This is helpful, and I think I'm</p> <p>11 understanding this better.</p> <p>12 But I -- I guess to hopefully simplify</p> <p>13 things for me, I want to just focus on just</p> <p>14 disgorgement. Because I understand once we start</p> <p>15 mixing disgorgement and lost profits, you've got to</p> <p>16 net them out against each other, or you do net them</p> <p>17 out against each other, and then you end up with</p> <p>18 lots of different possibilities.</p> <p>19 And I know we can get there, but I'm</p> <p>20 hoping to maybe do this one step at a time.</p> <p>21 A Okay. So what I just described has</p> <p>22 nothing to do with lost profits.</p> <p>23 Q Okay. So then let me see if I understand.</p> <p>24 So the 455.5 million unjust enrichment</p> <p>25 scenario in paragraph 8, that's a scenario where</p> <p style="text-align: right;">Page 209</p>

<p>1 you're saying the Court just says, "Sorry," to 2 Ms. Elsten. "You didn't meet your burden to 3 apportion, and therefore, too bad, no apportionment 4 will be done." 5 So you've taken the revenues, and you've 6 deducted the costs that you believe are appropriate 7 to deduct from the revenues, and you've stopped 8 there; is that right? 9 A Yes, that's correct. 10 Q In paragraph 9, where you come up with the 11 unjust enrichment figure of 56.9 million, you take 12 the revenues, you deduct the costs that you say are 13 appropriate to deduct from the revenues, and then 14 you do do some kind of apportionment, right? 15 A I use -- this is important. 16 Q Yes. 17 A I use her general methodology for doing 18 the apportionment with some corrections. So it's a 19 corrected version of her general methodology. 20 Q Okay. And then you talked about hybrid 21 scenarios, also, right? Can you point me to where 22 the hybrid scenarios are disclosed somewhere in 23 your -- 24 A Yeah. So in the exhibits -- we can go 25 through them a little bit.</p> <p style="text-align: right;">Page 210</p>	<p>1 errors in her apportionment mechanism. 2 Q And that's what you called adjusted 3 apportionment? 4 A That's what I call adjusted apportionment. 5 Case 3 is a lot like Case 1, except Case 3 6 is, the Court accepts Ms. Elsten's cost methodology 7 but rejects her revenue apportionment. 8 Q I get it. 9 A And Case 4 is I adjusted -- Case 4 is 10 adjusted profit margin and adjusted apportionment. 11 And then -- let me see. I'm just trying to make 12 sure these labels are all correct. Oh, yeah. So 13 the lost profits are the same. The -- oh, yeah. 14 Sorry. 15 Case 4 is her profit margin, so her cost 16 deductions are accepted, but the apportionment -- 17 her cost -- her cost adjustments are accepted, so 18 the Court uses hers rather than mine for the costs, 19 but the apportionment is -- and her general 20 methodology for apportionment is accepted, but my 21 corrections. 22 Q Okay. I get it. 23 When you're focusing for a second just on 24 the apportionment and not on the different profit 25 margins that are in these different alternatives --</p> <p style="text-align: right;">Page 212</p>
<p>1 So the hybrid scenarios -- maybe I made it 2 sound more complicated than it is. 3 A hybrid scenario would be -- again, let's 4 keep lost profits to the side. 5 Q Right. 6 A Okay. But every version has a lost profit 7 flavor and a non-lost profit flavor. 8 Q Right. 9 A But the hybrid scenarios are -- so for 10 example -- are you looking at Exhibit 3? 11 Q I can. Okay. 12 A Okay. So for example, Case 1 is adjusted 13 profit margin, so that's -- I correct her costs to 14 what I think is a more appropriate cost measure. 15 That's where the profit margin comes from. And no 16 apportionment says -- the Court says, "Sorry, you 17 didn't meet your burden. I have no data on which to 18 do apportionment." 19 Q Got it. 20 A Case 2 is adjusted profit margin. So I, 21 again, corrected her costs for what I think are the 22 appropriate deductible costs. 23 And adjusted apportionment, I have adopted 24 her general methodology for apportionment but have 25 corrected it for what I think are some clear logical</p> <p style="text-align: right;">Page 211</p>	<p>1 A Yes. 2 Q -- you have a no-apportionment version and 3 you have an adjusted-apportionment version, right? 4 A Correct. 5 Q Is there only one adjusted-apportionment 6 version? You don't have different flavors of 7 adjusted apportionment, do you? 8 A I have one flavor of adjusted 9 apportionment. So I adopt her general 10 methodology -- 11 Q Okay. 12 A -- and make some corrections to it. 13 Q Okay. I get it. Thank you. 14 Is it fair to say -- and I don't want to 15 put words in your mouth. But is it fair to say that 16 your dispute with Ms. Elsten over what costs are 17 appropriate to deduct concerns only her deduction of 18 R&D costs? 19 A My recollection -- I would have to look 20 back at the report -- is the deduction of R&D costs 21 is certainly almost all of it, and I think it's all 22 of it. But I would have to refresh my memory. 23 Q Okay. And you -- is it your belief that 24 Ms. Elsten deducted all R&D costs that were 25 reflected in Arista's financial statements?</p> <p style="text-align: right;">Page 213</p>

<p>1 A No. So my understanding is, she did an 2 apportionment based on share of sales, but I think 3 the concerning issue there is that -- so you asked 4 share of sales. 5 I think the concerning issue there is for 6 Arista to have sold -- R&D is not a variable cost, 7 right? So it's hard to see how Arista could have 8 made its non-U.S. sales with the share of R&D that's 9 only equal to the non-U.S. sales share of revenue. 10 So in order to make the non-U.S. sales, 11 they would have -- Arista would have had to do R&D 12 You know, the R&D mostly amortizes over all of the 13 sales, right? They sell similar products elsewhere. 14 So that is the -- that is the concern 15 about the deduction of R&D. 16 Q Most of Arista sales are U.S. sales, 17 right? 18 A Yes. 19 Q And couldn't you also say that if 20 Arista -- Arista would have had to spend all of the 21 amount of R&D that it had to spend if it was selling 22 only in the U.S., not internationally? 23 A Again, I don't know about all of the R&D. 24 But they would have had to make -- they would have 25 had -- again, it is probably not proportionate to</p> <p>Page 214</p>	<p>1 appropriate -- I think there could well be an 2 appropriate deduction, but Ms. Elsten didn't present 3 that evidence. She just apportioned relative to 4 revenue. 5 Q And your approach -- tell me if this is 6 not correct -- but your approach was essentially, 7 "Ms. Elsten didn't make the proper deduction of R&D, 8 and so therefore I'm not going to make any deduction 9 of R&D"? 10 A So I didn't -- I didn't have any basis for 11 making a particular deduction for R&D because she 12 didn't provide any -- she didn't provide any 13 correctable way to do it. She didn't provide any 14 evidence. 15 And I think deducting R&D, given that 16 substantially, in that circumstance, without some 17 evidence that, you know, particular R&D expenditures 18 could be deducted or not, I think not deducting the 19 R&D, which, you know, would be required for non-U.S. 20 sales, you know -- would mostly be required for 21 non-U.S. sales, I think, you know, is the only thing 22 that I had evidence to do. 23 Q Okay. Let me shift topics a little bit 24 and ask you to look at your fair use report -- 25 A Okay.</p> <p>Page 216</p>
<p>1 sales. 2 Q Do you agree that some amount of R&D 3 expenses would properly be deducted from revenues in 4 this analysis? 5 A Yes, I think some amount of R&D expenses 6 would appropriately be deducted. 7 Q And in your analysis of what you consider 8 to be the proper amount of deductions, you deducted 9 no R&D expenses, right? 10 A Correct, because, again, the -- I 11 didn't -- actually, I will say, I don't actually -- 12 I have to think about the -- whether any R&D should 13 be deducted. 14 I adjusted -- because there was no -- you 15 know, I didn't have any data about how much R&D to 16 apportion, yeah, I didn't deduct it. 17 Q Why do you say you would have to think 18 about whether any R&D should properly be deducted? 19 A I'm thinking about it now. I thought 20 about it -- I thought about it at the time. 21 Again, the R&D is probably substantially 22 required to make the -- you know, substantially all 23 of the R&D is probably substantially required to 24 make the non-U.S. sales. 25 The -- so, you know, there may be an</p> <p>Page 215</p>	<p>1 Q -- which is Exhibit 1564, at page 16. 2 MS. CANDIDO: Give me a second. 3 THE WITNESS: Yes, page 16. Got it. 4 BY MR. SILBERT: 5 Q I'm waiting for your counsel. 6 MS. CANDIDO: Thank you. Sorry. Page 16? 7 Okay. 8 BY MR. SILBERT: 9 Q I just want to direct you to paragraph 37 10 on that page. 11 A Okay. 12 Q It says -- paragraph 37 says, "As 13 described above, data center switches differ across 14 a number of dimensions, including, among others, 15 form factor, port density, operating system 16 software, speed, reliability, and customer support. 17 When purchasing data center switches, customers may 18 consider these dimensions, among others, as well as 19 broader factors, such as support for virtualization 20 and software-defined networking," and then you say 21 you briefly describe some of these factors in the 22 following paragraphs. 23 Do you see that? 24 A Yes. 25 Q Do you agree that each of these factors</p> <p>Page 217</p>

<p>1 that you identify here in the succeeding paragraphs</p> <p>2 in your report have some value to customers?</p> <p>3 A So I don't know that all of these factors</p> <p>4 have value to all customers, but this is a set of</p> <p>5 factors which have value to some -- you know,</p> <p>6 these -- each of these factors has some value to</p> <p>7 some customers.</p> <p>19 Q Okay. In your -- we talked just a little</p> <p>20 bit ago about your different apportionment</p> <p>21 approaches, and you had the no-apportionment</p> <p>22 approach and then the adjusted-apportionment</p> <p>23 approach.</p> <p>24 A Yes.</p> <p>25 Q In your no-apportionment approach, did you</p> <p>Page 218</p>	<p>1 all the factors in the survey from Cascade is an</p> <p>2 appropriate way to do the apportionment.</p> <p>3 BY MR. SILBERT:</p> <p>4 Q So do you believe that your</p> <p>5 adjusted-apportionment approach is a reliable way to</p> <p>6 apportion profits in this case?</p> <p>7 MS. CANDIDO: Objection. Mischaracterizes</p> <p>8 the testimony.</p> <p>9 THE WITNESS: So as I said, I have said</p> <p>10 that I do not agree with Ms. Elsten's general</p> <p>11 methodology and the sources that she used to</p> <p>12 generate that methodology.</p> <p>13 And so in providing the corrections, it is</p> <p>14 my opinion that the general methodology is not</p> <p>15 appropriate, but I have corrected her general</p> <p>16 methodology for some logical errors.</p> <p>17 So since I have said that her</p> <p>18 apportionment methodology is not reliable, I am</p> <p>19 saying that this is a correction to -- for some</p> <p>20 logical errors if her apportionment methodology is</p> <p>21 accepted.</p> <p>22 But I do not think that she has met her</p> <p>23 burden of providing an appropriate apportionment</p> <p>24 methodology.</p> <p>25 ///</p> <p>Page 220</p>
<p>1 attempt to ascribe any value to any feature of an</p> <p>2 Ethernet switch other than the CLI?</p> <p>3 A So again, in my no-apportionment approach,</p> <p>4 I don't -- I do not apportion the revenue at all.</p> <p>5 And I think I make clear in my opening</p> <p>6 damages report that it is my understanding that</p> <p>7 apportionment is -- you know, that apportionment</p> <p>8 is -- should be done, that some apportionment should</p> <p>9 be done. But I don't do it because it's my</p> <p>10 understanding that Ms. Elsten is supposed to do it.</p> <p>11 Q And again, that's in your no-apportionment</p> <p>12 approach, right?</p> <p>13 A That's in my no-apportionment approach.</p> <p>14 Q Okay. Your adjusted-apportionment</p> <p>15 approach, you base it, at least in part, on the</p> <p>16 survey from Cascade that we were talking about</p> <p>17 earlier today, right?</p> <p>18 MS. CANDIDO: Objection.</p> <p>19 THE WITNESS: So Ms. Elsten bases a</p> <p>20 substantial part of her apportionment on the survey</p> <p>21 from Cascade that we talked about before.</p> <p>22 And I correct her apportionment for some</p> <p>23 logical issues with her apportionment, but I</p> <p>24 prefaced that by saying I don't think that the</p> <p>25 survey from Cascade is -- and the equal weighting of</p> <p>Page 219</p>	<p>1 BY MR. SILBERT:</p> <p>2 Q Okay. So with the adjusted-apportionment</p> <p>3 approach, you're essentially saying, "Ms. Elsten,</p> <p>4 the methodology you're using is not appropriate.</p> <p>5 But if you were going to use this methodology, you'd</p> <p>6 at least have to fix these logical errors that you</p> <p>7 made, and if you did that, the result would be X and</p> <p>8 not Y"?</p> <p>9 A Correct.</p> <p>10 MS. CANDIDO: Objection. Sorry.</p> <p>11 THE WITNESS: Correct.</p> <p>12 MR. SILBERT: Okay.</p> <p>13 MS. CANDIDO: Are we close to a bathroom</p> <p>14 break?</p> <p>15 MR. SILBERT: Yeah, why don't we take a</p> <p>16 break.</p> <p>17 THE VIDEO OPERATOR: Going off the record,</p> <p>18 the time is 4:29 p m.</p> <p>19 (Recess, 4:29 p.m. - 4:35 p m.)</p> <p>20 (Exhibit 1576 was marked for</p> <p>21 identification and is attached hereto.)</p> <p>22 THE VIDEO OPERATOR: Back on the record.</p> <p>23 The time is 4:35 p m.</p> <p>24 BY MR. SILBERT:</p> <p>25 Q Dr. Chevalier, the court reporter has</p> <p>Page 221</p>

<p>1 A I actually don't know the answer to that.</p> <p>2 Q Do you know approximately the answer?</p> <p>3 A I actually don't.</p> <p>4 Q Do you know if it's more than \$500,000?</p> <p>5 A My guess is it's more than \$500,000, but I</p> <p>6 haven't actually -- I actually don't know.</p> <p>7 Q Do you know if it's more than a million</p> <p>8 dollars?</p> <p>9 A I don't know for a fact. I really don't</p> <p>10 know.</p> <p>11 Q Do you have a belief?</p> <p>12 A I really don't know.</p> <p>13 MR. SILBERT: Okay. I know we just took a</p> <p>14 break, but if it's okay, can we take a quick break</p> <p>15 again? And hopefully we can be done very quickly.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE VIDEO OPERATOR: Going off the record,</p> <p>18 the time is 4:50 p m.</p> <p>19 (Recess, 4:50 p.m. - 4:54 p m.)</p> <p>20 THE VIDEO OPERATOR: Back on the record.</p> <p>21 The time is 4:54 p m.</p> <p>22 MR. SILBERT: Dr. Chevalier, thank you for</p> <p>23 your time. I have no further questions for you.</p> <p>24 I do want to designate this transcript as</p> <p>25 outside counsel only.</p> <p>Page 230</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 I, JUDITH CHEVALIER, Ph.D., do hereby</p> <p>9 declare under penalty of perjury that I have read</p> <p>10 the foregoing transcript; that I have made any</p> <p>11 corrections as appear noted, in ink, initialed by</p> <p>12 me, or attached hereto; that my testimony as</p> <p>13 contained herein, as corrected, is true and correct.</p> <p>14 EXECUTED this _____ day of _____,</p> <p>15 2016, at _____,</p> <p>16 (City) (State)</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 JUDITH CHEVALIER, Ph.D.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 232</p>
<p>1 MS. CANDIDO: I would designate it as</p> <p>2 outside counsel only for Cisco as well, subject to</p> <p>3 de-designation.</p> <p>4 THE VIDEO OPERATOR: This concludes</p> <p>5 today's videotaped deposition of Dr. Judith</p> <p>6 Chevalier. We're off the record at 4:55 p m. Thank</p> <p>7 you.</p> <p>8 (TIME NOTED: 4:55 p.m.)</p> <p>9 --o0o--</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 231</p>	<p>1 I, the undersigned, a Certified Shorthand</p> <p>2 Reporter of the State of California, do hereby</p> <p>3 certify:</p> <p>4 That the foregoing proceedings were taken</p> <p>5 before me at the time and place herein set forth;</p> <p>6 that any witnesses in the foregoing proceedings,</p> <p>7 prior to testifying, were administered an oath; that</p> <p>8 a record of the proceedings was made by me using</p> <p>9 machine shorthand which was thereafter transcribed</p> <p>10 under my direction; that the foregoing transcript is</p> <p>11 a true record of the testimony given.</p> <p>12 Further, that if the foregoing pertains to</p> <p>13 the original transcript of a deposition in a Federal</p> <p>14 Case, before completion of the proceedings, review</p> <p>15 of the transcript [x] was [] was not requested.</p> <p>16 I further certify I am neither financially</p> <p>17 interested in the action nor a relative or employee</p> <p>18 of any attorney or any party to this action.</p> <p>19 IN WITNESS WHEREOF, I have this date</p> <p>20 subscribed my name.</p> <p>21</p> <p>22 Dated: 07/28/2016</p> <p>23</p> <p>24  CARLA SOARES</p> <p>25 CSR No. 5908</p> <p>Page 233</p>